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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Attn: Audio Division, Media Bureau

**Re: Puerto Rico Broadcasters Association
Notice of Written *Ex Parte*
Auction No. 100 (AU Docket No. 17-329)**

Dear Ms. Dortch:

Puerto Rico Broadcasters Association (“PRBA”), by its undersigned counsel, hereby requests that the Audio Division of the FCC’s Media Bureau (“Audio Division”) entertain individual requests for waiver of certain rules governing the resolution of mutually exclusive Auction No. 100 cross-service FM translator applications (“Auction No. 100 MX Resolution Rules”) filed by AM broadcasters located in the U.S. Virgin Islands and Puerto Rico that have filed in the Auction No. 100 filing window (“USVI and PR AM Broadcasters”).

The PRBA represents many AM broadcasters operating in the U.S. Virgin Islands and Puerto Rico that have filed FM translator proposals in the recent Auction No. 100 filing window. Some of PRBA’s members now have mutually exclusive FM translator proposals, and therefore run the risk of failing to obtain a FM translator through Auction No. 100 – the last filing window in the FCC’s AM Revitalization Program. Due to the devastating effects of Hurricanes Irma and Maria, PRBA believes that failing to entertain such individual waiver requests filed by the USVI and PR AM Broadcasters would severely hinder the efforts of these broadcasters in restoring broadcast services to these islands.

Proposed Waiver Requests of the Auction No. 100 MX Resolution Rules

Specifically, PRBA requests that the Audio Division entertain individual waiver requests filed by the USVI and PR AM Broadcasters regarding the Auction No. 100 MX Resolution Rules insofar as to permit the resolution of mutual exclusivities in their Auction No. 100 FM translator proposals by filing technical amendments which specify the movement of conflicted translators to *any* available channel. Furthermore, PRBA requests that pursuant to such waiver requests, the

USVI and PR AM Broadcasters' technical amendments be treated as permissible *minor* changes to their FM translator proposals so long as the amended facilities: (1) do not cause interference to any existing or proposed FM broadcast station; and (2) comply with the basic coverage requirements for FM translators.¹ As further detailed below, permitting USVI and PR AM Broadcasters to file requests for waiver of the Auction No. 100 MX Resolution Rules is in the public interest, and comports with the FCC's AM Revitalization goals.

Background

A. FCC's Rules Governing the Resolution of Mutual Exclusivities in Auction No. 100

Currently, technical amendments to resolve mutual exclusivities between Auction No. 100 FM translator proposals are limited to *minor* modifications.² Section 74.1233(a)(1) of the Commission's rules defines minor modifications to FM translator applications as any change that is *not* considered a *major* modification.³ Section 74.1233(a)(1) also defines *major* modifications to FM translator applications as any change: (1) "in frequency (output channel) *except* changes to first, second or third adjacent channels, or intermediate frequency channels;" (2) "in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area;" and (3) "in frequency relocating an unbuilt station from the non-reserved band to the reserved band, or from the reserved band to the non-reserved band."⁴ Accordingly, with respect to channel changes, AM broadcasters may resolve mutual exclusivities in their Auction No. 100 FM translator proposal *only* by moving conflicted translators to a first, second, or third adjacent channel, or to an intermediate frequency channel.

¹ 47 C.F.R. § 74.1201(g) ("The coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the greater of either the 2 mV/m daytime contour of the AM station or a 25-mile (40 km) radius centered at the AM transmitter site.").

² *Filing Instructions for Second Cross Service FM Translator Auction Filing Window for AM Broadcasters (Auction 100) to Be Open January 25 – January 31, 2018, Freeze on FM Translator and Low-Power FM Station Minor Change Applications and FM Booster Applications January 18 – 31, 2018*, Public Notice, 32 FCC Rcd. 10173, 10187, ¶ 50 (2017) ("Auction No. 100 Public Notice") (citing 47 C.F.R. § 74.1233(a)(1)).

³ 47 C.F.R. § 74.1233(a)(1). *See also* *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd. 12145, 12152, n. 35 (2015) ("AM Revitalization First Report and Order") (same) (citations omitted).

⁴ 47 C.F.R. § 74.1233(a)(1) (emphasis added). *See also* *AM Revitalization First Report and Order*, 30 FCC Rcd. at 12148, n. 12 and 12152, n. 35 (same) (citations omitted).

B. FCC's Standard for Waiver

The FCC may grant a waiver of its rules for good cause shown.⁵ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁷ Such a waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁸

With regards to the AM Revitalization Program, the FCC has previously waived its modification restrictions for FM translator applications when strict compliance would have prevented eligible AM stations from acquiring FM translators. Specifically, in the *AM Revitalization First Report and Order*, the Commission reclassified the 250-mile relocations of non-reserved band FM translator stations as permissible *minor* modifications to ensure the involvement of AM stations that would “benefit the most from the acquisition of a[n] FM translator” in the AM Revitalization Program.⁹ Doing so ensured the involvement of all eligible AM broadcasters by balancing the availability of the FM translator spectrum.¹⁰ As demonstrated below, these requirements would also be met for USVI and PR AM Broadcasters’ requests for waiver of the Auction No. 100 MX Resolution Rules.

Discussion

A. There is Good Cause for the FCC to Entertain Waiver Requests of the Auction No. 100 MX Resolution Rules Filed by Broadcasters in the U.S. Virgin Islands and Puerto Rico

There is good cause for the Audio Division to entertain USVI and PR AM Broadcasters’ requests for waiver of the Auction No. 100 MX Resolution Rules as doing so would ensure these broadcasters’ continued participation in the AM Revitalization Program. The purpose of the AM Revitalization Program is to “enhance the vitality of the AM Broadcast service” in order to bolster AM service quality.¹¹ Furthermore, in the *AM Revitalization First Report and Order*, the

⁵ 47 C.F.R. § 1.3.

⁶ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁸ *Northeast Cellular*, 897 F.2d at 1166.

⁹ *See AM Revitalization First Report and Order*, 30 FCC Rcd. at 12152, ¶ 15.

¹⁰ *See id.*

¹¹ *Id.* at 12146, ¶¶ 1-2.

FCC observed that “AM radio has traditionally served as a vital source of news and information, as well as a critical lifeline in times of emergencies and man-made or natural disasters.”¹² As such, one of the purposes of the program is to ensure that AM broadcasters continue providing essential public safety broadcast services to their communities through the retransmission of their AM station signals in the FM band via FM translators.

Waiver of the Auction No. 100 MX Resolution Rules would ensure that the USVI and PR AM Broadcasters are able to meet the needs of their communities devastated by Hurricanes Irma and Maria. Streamlining the process by which the USVI and PR AM Broadcasters are able to resolve the technical conflicts between their FM translator proposals would ensure that these broadcasters provide much-needed broadcast services to their communities through FM translators as soon as possible. Accordingly, there is good cause for the Commission to entertain such waiver requests filed by USVI and PR AM Broadcasters.

B. Its Inequitable to Continue Subjecting the USVI and PR AM Broadcasters to the Burdensome Auction No. 100 MX Resolution Rules

It would be inequitable to continue subjecting the USVI and PR AM Broadcasters to the burdensome requirements of the Auction No. 100 MX Resolution Rules. Pursuant to these rules, AM broadcasters with mutually exclusive FM translator proposals cannot resolve the technical conflicts between their applications by *intra alia* moving more than three adjacent channels away from their original proposed facilities – otherwise such a change would be deemed an impermissible major modification.¹³ Accordingly, moving conflicted translators to *any* available channel to resolve mutual exclusivities between Auction No. 100 FM translator applications would otherwise be considered impermissible major modifications absent grant of individual waivers for affected broadcasters.

As a result of the devastation caused by Hurricanes Irma and Maria, the USVI and PR AM Broadcasters have been expending considerable financial, technical, and human resources in restoring broadcast service to the islands as soon as possible. Accordingly, these broadcasters currently lack the resources necessary to resolve mutual exclusivities within the current confines of the Auction No. 100 MX Resolution Rules. Instead, allowing the USVI and PR AM Broadcasters to resolve mutually exclusive Auction No. 100 FM translator applications by moving conflicted translators to *any* available channel would ensure that these broadcasters are able to continue to participate in the AM Revitalization Program without unnecessarily diverting their

¹² *Id.* at 12146-47, ¶ 3.

¹³ *See Auction No. 100 Public Notice*, 32 FCC Rcd. 10173 at ¶ 50 (limiting technical amendments of mutually exclusive Auction No. 100 FM translator applications to minor modifications); 47 C.F.R. § 74.1233(a)(1) (defining a major modification of an FM translator application as *intra alia* a change “in frequency (output channel) *except* changes to first, second or third adjacent channels, or intermediate frequency channels” (emphasis added)).

resources to the resolution of their mutually exclusive applications. Accordingly, failing to entertain individual waiver requests filed by USVI and PR AM Broadcasters would be inequitable as it would prevent such broadcasters from acquiring an FM translator station – at all.

C. Granting AM Broadcasters in the U.S. Virgin Islands and Puerto Rico Relief from the Auction No. 100 MX Resolution Rules is in the Public Interest

It is in the public interest to relieve the USVI and PR AM Broadcasters from the burdensome requirements of the Auction No. 100 MX Resolution Rules as doing so would aid in the restoration of broadcast services to the islands as quickly as possible. As stated above, these broadcasters provide essential public safety services to communities in the U.S. Virgin Islands and Puerto Rico. Furthermore, the USVI and PR AM Broadcasters are endeavoring to restore broadcast service to the islands as soon as possible following the devastation wrought by Hurricanes Irma and Maria, and are expending all available resources to do so. Therefore, having to comply with the burdensome Auction No. 100 MX Resolution Rules would divert necessary resources away from the completion of these efforts.

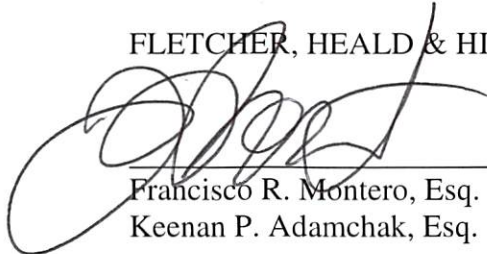
Finally, granting USVI and PR AM Broadcasters' individual waiver requests would still comport with other Commission rules. The affected USVI and PR AM Broadcasters must still ensure that any technical amendments to Auction No. 100 FM translator proposals do not cause interference to other FM broadcast stations or create future mutual exclusivity concerns. Accordingly, it is in the public interest to ensure that the USVI and PR AM Broadcasters are afforded every opportunity to acquire FM translator stations that would aid the recovery efforts in the U.S. Virgin Islands and Puerto Rico.

Conclusion

For the reasons set forth above, PRBA respectfully requests that the Audio Division entertain individual requests for waiver of Auction No. 100 MX Resolution Rules filed by individual AM broadcasters located in the U.S. Virgin Islands and Puerto Rico that have filed in the Auction No. 100 filing window.

Respectfully submitted,

FLETCHER, HEALD & HILDRETH, PLC



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